

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E050 OF 2025

LUCY PLAINTIFF	MWAURA.....	1ST
CATHERINE PLAINTIFF	WANGARI.....	2ND
MARY PLAINTIFF	MUYA.....	3RD
MARY PLAINTIFF	NJAMBI.....	4TH
JACINTA PLAINTIFF	WAIRIMU.....	5TH
TERESIA PLAINTIFF	MUCHERU.....	6TH
MARY PLAINTIFF	KAMAU.....	7TH
MBURUKO PLAINTIFF	KUNGU.....	8TH
PATRICK PLAINTIFF	NGUMI.....	10TH
ANNE PLAINTIFF	MUCHERU.....	11TH
ANN PLAINTIFF	NDEGWA.....	12TH
PAUL PLAINTIFF	NDURA.....	13TH
RAYMOND PLAINTIFF	NGARU.....	14TH

STANLEY PLAINTIFF	KARANJA.....	15 TH
NATHAN PLAINTIFF	KAMAU.....	16 TH
SYLVIA PLAINTIFF	WAIRIMU MWANGI.....	17 TH
MARY PLAINTIFF	WANJIKU MAIBA.....	18 TH
KAMAU PLAINTIFF	INVESTORS.....	19 TH
DORCAS PLAINTIFF	MUTHONI MWANGI.....	20 TH
MONICA PLAINTIFF	MWIHAKI.....	21 ST
MARTHA PLAINTIFF	AND JANET NJUGUNA.....	22 ND
NASH & PLAINTIFF	JOSHI BARTON.....	23 RD
CHRISTINE PLAINTIFF	KIMARI.....	24 TH
TABITHA PLAINTIFF	NJOROGE.....	25 TH
NJERI PLAINTIFF	MWEGA.....	26 TH
PATRICK PLAINTIFF	MUCHIRI.....	27 TH
NAFTALY PLAINTIFF	KAMAU.....	28 TH
PETER PLAINTIFF	MUNUNI.....	29 TH

JANE PLAINTIFF	GATHONI.....	30TH
CHARLES PLAINTIFF	NDUNGU.....	31ST
BETH NJERI.....		32ND PLAINTIFF
MARRIAM PLAINTIFF	GATHONI NJUGUNA.....	33RD
ANN PLAINTIFF	NJOKI.....	34TH
MARGARET PLAINTIFF	WAIRIMU.....	35TH
ESTHER PLAINTIFF	WAIRIMU.....	36TH
ANNE PLAINTIFF	MUMBI.....	37TH
JOSEPH PLAINTIFF	NJUGUNA.....	38TH
MAGDALENE PLAINTIFF	GATHURI.....	39TH
MARGARET PLAINTIFF	WANJIRU.....	40TH
CHARLES PLAINTIFF	KIBE MURAGURI.....	41ST
MARY PLAINTIFF	WAMBUI.....	42ND
JOSEPH PLAINTIFF	KIHORO MUTURI.....	43RD
JOAN PLAINTIFF	WACHUKA.....	44TH
NAOMI PLAINTIFF	WAITHERA.....	45TH

VERONICA	WANGUI.....	46TH
PLAINIFF		
CHARLES	MUNYUA.....	47TH
PLAINTIFF		
MONICA	MWIHAKI.....	48TH
PLAINTIFF		

VERSUS

FLORENCE	WAIHERA	MWAURA.....	1ST
DEFENDANT			
MARGARET	NDUTA	NDIRANGU.....	2ND
DEFENDANT/APPLICANT			
PRISCILLA	WANJIKU	THUKU.....	3RD
DEFENDANT			
MARY	WANGARI	THUKU.....	4TH
DEFENDANT/APPLICANT			
DISTRICT	LAND	REGISTRAR-NAIVASHA.....	5TH
DEFENDANT			
CHIEF	LAND	REGISTRAR.....	6TH
DEFENDANT			
REGISTRAR	OF	TITLES.....	7TH
DEFENDANT			
ATTORNEY	GENERAL.....		8TH
DEFENDANT			

RULING.

1. What is before me for determination is the 2nd and 4th Defendants/Applicants’ Notice of Motion Application dated 16th January, 2026 brought pursuant to the Provisions of Order 2 Rule 151(a), (b), (c) and (d), Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B, 3, 3A, 6, 7, 8 & 63(e) of the Civil Procedure Act Cap 21 laws of Kenya & all

other enabling provisions of law in which the Defendant/Applicant has sought for the following orders:

- i. That the Plaintiffs/ Respondents suit hereto be struck out *in Limine* for being *sub-judice*, failing to disclose any reasonable cause of action and being an abuse of the Court process.
 - ii. That the Plaintiffs' Plaint be struck out for failing to comply with the provisions of the Civil Procedure Rules and on the ground that the Verifying Affidavit contains false, scandalous and offensive matter.
 - iii. Costs of the Application and the suit be borne by the Plaintiffs/ Respondents.
2. The said Application is premised on the grounds therein and the Supporting Affidavit of equal date sworn by Mary Wangari Thuku, the 4th Defendant herein who deposed that the Plaintiffs' suit herein is incompetent, an afterthought, misadvised, baseless, frivolous, scandalous, misconceived, lacks merit and an abuse of the Court process as the same does not disclose any reasonable legal and/or factual ground to warrant the court granting the prayers sought.
3. She explained that the Plaintiffs' claim relates to Land Reference No. R 57123, LR No. 1556/167, situated in the south-east of Naivasha Town, which property had allegedly been purchased from the late James Mwaura Thuku, a son of the original owner of the suit land, Samuel Thuku (deceased)
4. That at the time of the alleged transactions, the late James Mwaura Thuku purported to sell the suit land under a grant issued to him on 1st December, 2005, in the Eldoret High Court Succession Cause No. 175 of 2003, in the Estate of Samuel Thuku Kiarie. However, the 2nd to 4th Defendants, being the daughters of the late Samuel Kiarie Thuku, had been ignored and disinherited by James Mwaura Thuku. They filed an

objection, and in a ruling dated 30th April 2020, the court revoked the grant.

5. She argued that the revocation of the grant held by the late James Mwaura Thuku extinguished any authority, so the said James lacked capacity to sell or transfer the estate property to the Plaintiffs and/or third parties, as he had no legal capacity to transact, sell, transfer, or confer any proprietary interest in the estate property of the late Samuel Kiarie Thuku. The revocation had also extinguished any authority to deal with the estate property, and all transactions founded on the revoked grant had become legally untenable. That, in any event, the said revocation decision was under appeal in the Eldoret Court of Appeal Civil Appeal No. E044 of 2022 and No. E049 of 2022 Florence Waithera Mwaura vs Margaret Nduta Ndirangu & Others respectively. The appeals were still active and pending determination.
6. That vide an application dated 17th June, 2020, in Eldoret High Court Succession Cause No. 175 of 2003, the 1st Defendant had sought for stay of proceedings and execution of orders that had been issued on 30th April, 2020, pending the hearing and determination of the matters before the Court of Appeal, wherein vide its ruling, the court had and directed that parties maintain the status quo obtaining as at the date thereof, in respect of properties forming part of the estate of the deceased, Samuel Thuku Kiarie, (including mutations ensuing therefrom,) pending the hearing and determination of the appeal before the court of Appeal.
7. That the 1st Defendant herein had also filed another Application for Stay of Execution dated 8th June, 2022, wherein the court had granted another stay order pending the intended appeal.
8. That the Plaintiffs herein had also filed an application dated 20th July, 2020, in the Eldoret High Court Succession Cause matter seeking an order for review of the ruling of 30th April, 2020, which Application had been dismissed vide a ruling dated 30th November, 2020.

9. That in an application dated 18th May 2020, the Applicants had sought, among other prayers, that all title deeds and transfers effected by use of the grant confirmed on 11th December 2006 be recalled for redistribution of the estate of the deceased wherein vide a ruling of 19th May, 2022, the Applicants had been issued with a fresh grant of letters of administration which was to be confirmed within 3 months.
10. She deposed that the issues raised in the instant suit were directly and substantially in issue with the issues pending in the Court of Appeal, thus rendering the present suit *sub judice* contrary to the provisions of Section 6 of the Civil Procedure Act.
11. She contended that the Environment and Land Court (ELC) cannot sanitise or validate transactions that the Plaintiffs allegedly derived from a revoked grant, as the validity of the grant and the resulting transactions are purely succession issues awaiting determination by the Court of Appeal. She further contended that, having been aware of the revocation, the pending appeals, and the resulting stay orders at the time of filing the present suit, the Plaintiffs deliberately filed the suit, thereby abusing the court process. She thus maintained that the present ELC suit is an abuse of the court process, intended to pre-empt and undermine the jurisdiction of the Court of Appeal.
12. That no reasonable cause of action could lie before the Honourable Court where the foundation of title is a revoked grant under challenge on appeal; thus, the Plaintiffs' claim is legally untenable and incompetent. That at paragraph 22 of the Complaint, the Plaintiffs, with the intention to mislead the Honourable Court, pleaded that there was no other suit pending or previous proceedings between the parties over the same subject matter. This amounted to material non-disclosure.
13. In response to and in opposition to the 2nd and 4th Defendants' Application, the Plaintiffs, through their Replying Affidavit dated 22nd January 2026, sworn and sworn by Stanley Karanja, the 15th Plaintiff

deponed that the 2nd and 4th Defendants' contention that the instant suit is sub judice was wholly misleading and had no basis.

14. It is not disputed that James Mwaura Thuku (deceased) was the registered owner of Land Parcel Number I.R 57123 LR 1556/167 situated in the south-east of Naivasha Town (suit land), which was subsequently divided into 92 plots and sold to the Plaintiffs. However, the said suit land was originally owned by Samuel Thuku Kiarie (deceased). On 1st December, 2005, James Mwaura Thuku obtained Letters of Administration in respect of the estate of the said Samuel Thuku Kiarie. The grant of Letters of Administration was confirmed on 11th December, 2006, and James Mwaura Thuku was registered as the proprietor of the suit land pursuant to the said confirmed grant issued in the Eldoret High Court Succession Cause No. 175 of 2003.
15. That between the years 2008 and 2010, the Plaintiffs herein, while relying on the aforementioned confirmed grant and the title that had been issued to James Mwaura Thuku in respect of the suit land, entered into a sale transaction in respect of 92 plots that had been subdivided from the suit land by the said James Mwaura Thuku and proceeded to pay colossal sums of money. That thereafter, they took possession of the suit land, with a majority of them developing permanent residential and commercial premises therein.
16. That, unfortunately, James Mwaura Thuku passed away on 24th December, 2017, after which Florence Waithera Mwaura, the 1st Defendant herein, took out letters of administration in respect of his Estate vide Eldoret HC Succession Cause No. 7 of 2018. That, in a ruling dated 30th April, 2020, in Eldoret HC Succession Cause No. 175 of 2003, the Court had revoked the grant dated 1st December, 2005, and confirmed on 11th December, 2006.
17. That a perusal of the said ruling shows that the said grant had been revoked for inoperativeness pursuant to Section 76(e) of the Law of Succession Act, because the holder had then been deceased, not because

it had been obtained fraudulently, illegally, or by concealment of material facts. Indeed, the ruling had confirmed that the said grant had been obtained in accordance with the process of petitioning, gazettelement, and confirmation, with the consent of the 2nd and 4th Defendants.

18. That whilst the ruling in Eldoret HC Succession Cause No. 175 of 2003 dated 30th April, 2020, was now the subject of the two appeals before the Court of Appeal, being Eldoret Court of Appeal in Civil Appeal No. E044 of 2022, and Civil Appeal No. E049 of 2022, vide their application dated 20th July, 2020 in Eldoret HC Succession Cause No. 175 of 2003, they had sought a declaration that anything that had been done by James Mwaura Thuku and themselves in reliance on the grant dated 1st December, 2005 and confirmed on 11th December, 2006 had remained legal and valid so long as the revocation of the said grant was only on account of the holder thereof James Mwaura Thuku being deceased and thus inoperative and not on account of the same having been obtained fraudulently.
19. That vide a ruling of the court dated 30th November, 2020, the court found that it lacked jurisdiction to handle the issues relating to land and gave them a single recourse to move the Environment and Land Court for the determination of their claim as purchasers from the said James Mwaura Thuku (deceased).
20. That their pleadings before the court had disclosed all the facts and they had annexed all the documentation, including the court rulings where their claim was simple and straightforward, being the recourse of a party who had relied on a valid court grant, a valid confirmed grant, and a subsequent title issued in reliance on the said grant and confirmed grant.
21. He argued that had the High Court in Eldoret, in its ruling dated 30th April, 2020, concluded that James Mwaura Thuku obtained the grant and the confirmed grant fraudulently, then they could be bound by the 2 pending appeals in the Court of Appeal. That, instead, the High Court in Eldoret had directed them to pursue their claim in the ELC, which was why they were before this court.

22. That a situation should not be allowed in which they are directed by the Eldoret High Court to pursue our claim before the ELC, and when they file a claim in the said ELC, they are again told that they are abusing the court process and should await the determination of the appeals that had emanated from the said court that had told them to move to the ELC.
23. That, in any event, they were not parties in the Eldoret Court of Appeal Civil Appeal Nos. E044 and E049 of 2022, nor in Eldoret HC Succession Cause No. 175 of 2003. The pending appeals in the Court of Appeal were between the 2nd and 4th Defendants and concerned a succession dispute over the estates of James Mwaura Thuku (deceased) and Samuel Thuku Kiarie (deceased), and therefore did not address their issues as Purchasers/Creditors of the estate. He contended that the said Appeals could only be relevant if James Mwaura Thuku were shown to have obtained the subject grant and confirmed grant fraudulently, but the succession court had only said that the same was inoperative, as the said James Mwaura Thuku was now deceased. He thus contended that their suit is not sub judice.
24. He also argued that their suit is not an abuse of court process, as they had approached this court as directed by the High Court in Eldoret, in its ruling dated 30th November, 2020, in Eldoret HC Succession Cause No. 175 of 2003. Therefore, they could not be told that they were in the wrong place.
25. He deposed that the application dated 16th January, 2026 sought to ensure that they were denied access to justice and that they had no recourse, yet the instant suit is the forum where they could seek an answer as to what a purchaser's recourse is when he relies on a grant issued by the court, a confirmed grant issued by the court, and a title emanating from the said court process. He thus urged the court to dismiss the application dated 16th January, 2026.
26. The Application was disposed of by way of Written Submissions.

2nd and 4th Defendants' Submissions

27. Vide their Submissions dated 3rd March, 2026, framed their issues for determination as follows:

- i. Whether the present suit is *sub judice* under Section 6 of the Civil Procedure Act.
- ii. Whether the Plaint discloses a reasonable cause of action.
- iii. Whether the suit constitutes an abuse of court process.
- iv. Whether the Plaint ought to be struck out.

28. On the first issue, namely whether the present suit is sub judice, they relied on Section 6 of the Civil Procedure Act to submit that the doctrine of sub judice aims to prevent multiplicity of suits, avoid conflicting decisions, and preserve judicial hierarchy. He further relied on the decision in **Kenya National Commission on Human Rights v Attorney General & Another [2020] eKLR** to argue that the foundation of the Plaintiffs' claim is a sale allegedly undertaken by James Mwaura Thuku under a grant issued in Eldoret HC Succession Cause No. 175 of 2003, which grant was revoked on 30th April 2020 and which revocation was the subject of Court of Appeal Civil Appeal Case Nos. E044 of 2022 and E049 of 2022. He further submitted that, subsequently, the validity of the grant and, by extension, all transactions following from it, was pending determination before the Court of Appeal.

29. That since the Plaintiffs' claim is entirely anchored in that very grant, if the Court of Appeal upholds the revocation, the Plaintiffs' claim collapses, and if it overturns the revocation, their claim may stand differently. That being so, this Court could not pre-empt the Court of Appeal's decision, and therefore the instant suit offends the provisions of Section 6 of the Civil Procedure Act. To buttress their argument, they relied on the decided case of **Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga [2015] eKLR**, to submit that, as the Court held, sub judice exists even where parties are not identical, so long as they litigate under the same title and the issues are directly connected. It was thus their submission that, since

the Plaintiffs' claim under James Mwaura Thuku (deceased) and the pending appeals concern the legality of his grant, the nexus is direct and substantial.

30. As to whether the Plaintiffs had disclosed a reasonable cause of action, they relied on the provisions of Order 2 Rule 15(1)(a) of the Civil Procedure Rules 2010, which provide that a pleading may be struck out if it discloses no reasonable cause of action. That, indeed, the Plaintiffs admit:

- i. Their interest flows from a confirmed grant issued in 2005 and confirmed in 2006.
- ii. The same grant was revoked on 30th April, 2020.

31. It was their contention that once a grant was revoked, it was deemed void *ab initio* unless preserved by statute and that the Plaintiffs' rights could not exceed those of the administrator. To support their contention, they relied in the decided case of **Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR**, where the Court of Appeal had held that only a person with a valid grant could represent or transact estate property. That upon revocation, authority ceases and transactions lack a legal foundation. They thus submitted that the Plaintiffs' claim lacks a legal substratum and that a cause of action must be legally enforceable.

32. They cited the case of **D.T Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1**, where the court stated that a suit should be struck out if it is so weak that it is beyond redemption. They further submitted that, in the instant case, the foundation (Grant) had been revoked, the revocation is under appeal, and the ELC cannot validate succession issues. They thus submitted that the Plaintiffs disclose no sustainable cause of action.

33. As to whether the instant suit constitutes an abuse of court process, they first submitted that an abuse of court process includes relitigation, forum shopping, filing parallel proceedings, and attempting to defeat

appellate jurisdiction as was held in **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**, where the Court of Appeal had defined abuse of process as the misuse of court machinery in a manner that is oppressive or vexatious.

34. That in the present suit, the Plaintiffs, who had participated in the Succession Proceedings, filed Review Applications and were aware of pending appeals, yet pleaded in paragraph 22 of their Plaint that no other proceedings existed. This constituted material non-disclosure.
35. That, indeed, the Plaintiffs seek to have this court determine issues whose foundation is under active appellate scrutiny, circumvent the Court of Appeal, and create the possibility of conflicting decisions, which is a textbook abuse of process.
36. On whether the court could sanitise transactions flowing from a revoked grant, they submitted in the negative, asserting that jurisdiction over the validity of a grant lies with the Probate Court. They relied on the landmark case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where it had been held that jurisdiction is everything, to submit that the ELC could neither revalidate a revoked grant nor determine the legality of the succession distribution under appeal. Their submission was that the Plaintiffs' remedy (if any) depends entirely on the outcome of the Court of Appeal, and that the ELC could not usurp appellate jurisdiction.
37. In response to Plaintiffs' argument that they are not parties to the pending appeals and that they had been directed to file a suit in the ELC, they contended that:
 - i. *Sub judice* does not require identical parties but only parties litigating under the same title.
 - ii. The High Court direction cannot override the provisions of Section 6 of the Civil Procedure Act.

- iii. The substratum of the Plaintiff's claim is still under appellate review; thus, their claim is premature and legally untenable.

38. In conclusion, they submitted that the issues in the present suit were directly and substantially in issue in pending Court of Appeal matters; that the Plaint is founded on a revoked grant; that the suit discloses no reasonable cause of action; that the Plaintiffs were engaging in forum shopping; and that the suit constitutes an abuse of court process. They thus urged the Honourable to strike out the Plaintiffs' suit in limine and to award costs of the Application and the suit to the Applicants.

Plaintiffs' Submissions.

39. The Plaintiffs' submissions dated 27th February 2026, summed up the case and what they consider undisputed facts as had been stated in their replying Affidavit and then questioned whether the said facts warrant the striking out of the Plaintiffs' suit.

40. On the doctrine of *sub judice*, they relied on the provisions of Section 6 of the Civil Procedure to submit that the said provision contains three critical requirements being:

- i. The matter in issue must be directly and substantially the same.
- ii. The previously instituted suit or proceeding must be between the same parties, or parties under whom they claim; and
- iii. The parties must be litigating under the same title.

41. That nonetheless, none of the aforementioned requirements had been satisfied in the instant suit, since, first, the parties are entirely different. They reiterated that the pending appeals are between Florence Waithera Mwaura, the 1st Defendant herein, on the one hand, and Margaret Nduta Ndirangu and Mary Wangari Thuku, the 2nd and 4th Defendants herein, on the other. The Plaintiffs herein are not parties to those appeals, nor were

they parties to the revocation proceedings in the succession cause. That indeed, the succession court had itself acknowledged as much when it directed them to the ELC. They relied on the decision in **Kenya Bankers Association v Kenya Revenue Authority [2019] KEHC 12178 (KLR)**, where the Court of Appeal had emphasised that the doctrine of sub judice is intended to prevent concurrent litigation between the same parties over the same subject matter, to submit that the said doctrine is not a tool to shut out third parties who have never had their day in court.

42. Secondly, the issues are fundamentally different. From the pleadings, the issues in the pending Appeals appear to concern the validity of the revocation itself, and perhaps the distribution of the estates, which are succession questions about who is entitled to administer the estate and how the assets should be shared among beneficiaries. However, in the instant case, the issue is whether the Plaintiffs, as bona fide purchasers for value who relied on a valid grant and a lawful title, can have their ownership disturbed following a revocation that was not based on fraud, which is a land question about the nature and extent of proprietary rights. They argued that the two were not the same issues, since they arose from different factual matrices, engaged different legal principles, and involved different parties. They maintained that the succession court itself had recognised the said distinction when it held that land matters fall within the jurisdiction of this court.

43. Thirdly, the relief sought is different. Whereas the pending appeals seek orders relating to the administration of the estates, the instant suit seeks declaratory relief regarding the validity of the Plaintiffs' title, and one does not preclude the other and can co-exist. The Court of Appeal may determine who should administer the estate, while the ELC may determine whether the Plaintiffs' purchases are protected; hence, there is no conflict.

44. It was their contention that the doctrine of *sub judice* rule is not meant to stifle litigation but to prevent abuse. Nonetheless, there is no abuse in

the instant suit, but merely different parties pursuing different remedies in different courts on different issues.

45. On the effect of revocation on prior transactions, they first submitted that their position was straightforward and supported by both statute and precedent. They argued that whereas Section 76 of the Law of Succession Act sets out the grounds for revocation, it does not provide that revocation automatically invalidates everything done under the grant, as that would produce chaos and every purchaser from an administrator would face the risk of having their titles undone years later by events they could neither control nor foresee.
46. That, indeed, the courts have consistently protected innocent third parties in such circumstances. They explained that where a grant becomes inoperative due to the administrator's death, the appropriate remedy is revocation and the issuance of a fresh grant, but the acts lawfully performed by the original administrator remain protected in the absence of proof of fraud. In support of their argument, they relied on **Re Estate of Epharus Nyambura Nduati (deceased)**, (sic) where the court emphasised that the critical inquiry is whether the grant had been obtained fraudulently or through concealment. Where, as here, there is no such finding, prior transactions must be respected.
47. That the said principle was not merely technical but grounded in justice and commercial sense. That the Plaintiffs had paid their money, received their titles, built their homes, and done everything right; hence the law could not now turn around and say: "Sorry, but because the administrator later died, your title is worthless." That, indeed, the Succession court in Eldoret had understood the said dilemma; hence it had directed the Plaintiffs to the ELC so that the said question could be fully ventilated and determined.
48. On the allegation of material non-disclosure, they contended that the record did not support it, as the Plaintiffs' Replying Affidavit, sworn by Stanley Karanja on 22nd January, 2026, expressly referred to the two

appeals at paragraphs 14, 23, 25, 26 and 27. That, far from concealing their existence, the Plaintiffs have been transparent about them and have correctly explained why those appeals did not affect their claim. That, in any event, the Plaintiffs' Complaint itself disclosed the procedural history, including the revocation and the subsequent ruling of 30th November, 2020, so there had been neither concealment nor dishonesty. That, for non-disclosure to warrant striking out, it must be deliberate and material, going to the root of the court's jurisdiction, which is not the case in the present suit.

49. On abuse of court process, they reiterated the sequence of events herein that had led to their being directed to file the instant suit, illustrating the irony that the same parties who had opposed them in the Succession court were now saying: "You are abusing the Court process by being here." They wondered how their following a court's express direction could possibly be an abuse. They argued that, with respect, the abuse lies in trying to shut them out after they have done exactly what they were told to do.

50. That the succession court's ruling of 30th November, 2020 is clear that the Court found it lacked jurisdiction and effectively transferred the land question to this court. That accordingly, the Plaintiffs could not be faulted for obeying that ruling. That if indeed the Applicants believed that the ruling was wrong, their remedy was to appeal it, not to lie in wait until the Plaintiffs had filed the instant suit and then pounce with an application to strike out. They relied on the case of **Feba Radio (Kenya) Ltd v Lumbig Venture Capital Ltd & another [2013] KEHC 3338 (KLR)**, where the Court cited the case of **DT Dobie & Co. (Kenya) Ltd v Muchina (1982) KLR**, to submit that the power to strike out should be exercised sparingly and only in the clearest of cases, which was not the case herein. That, instead, the present case is whether the Plaintiffs have a legitimate grievance that warrants a hearing on the merits.

51. In the interests of justice, they argued that the human dimension must be considered. That the Plaintiffs are 48 families who had lived on the suit land for over 15 years, built homes, started businesses, and raised children, and that some may have invested their life savings therein. That subsequently, to strike out their suit now, before they have had any opportunity to present their case, would be to deny them access to justice. That the same would leave them in a legal limbo: unable to pursue their claim in the succession court because it lacks jurisdiction, and unable to pursue it in this court because their suit has been struck out. They contended that the same could not be what the law intends.
52. They relied on Article 50(1) of the Constitution, which guarantees every person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, to submit that the Plaintiffs have not yet had that hearing and were only asking for the chance to prove their case.
53. In conclusion, they submitted that the 2nd and 4th Defendant's Application is fundamentally misconceived as it was asking the court to shut the door on the 48 innocent purchasers who had merely followed the direction of another court by invoking doctrines that do not apply, to parties that are not involved, on issues that are not the same. That subsequently, the proper cause is to dismiss the application with costs and allow the instant suit to proceed to hearing, where the merits of the Plaintiffs' claim could be properly assessed.

Determination.

54. I have considered the application herein, the affidavit in opposition, and the applicable law. I have also considered the submissions and the authorities cited by the parties herein. The Plaintiffs herein filed suit seeking a declaration that the sale transactions entered into between them and James Mwaura Thuku (deceased), a holder of a grant dated 1st December, 2005 and confirmed on 11th December, 2006, in Eldoret High

Court Succession Cause No. 175 of 2003, in respect of Land Parcel Number I.R 75123 LR 1556/167 situated South East of Naivasha Municipality, were lawful and valid, and that the Defendants be restrained from interfering with their peaceful occupation and enjoyment of the parcels of land they bought from James Mwaura Thuku (deceased).

55. In response the 2nd and 4th Defendant/Applicant then filed the current application seeking to strike out the suit *in limine* for the reasons that it was sub-judice and an abuse of the court process. They argued that the suit concerns issues already being litigated in the Court of Appeal in Appeals No. E044 and E049 of 2022, and contended that the Environment and Land Court (ELC) cannot validate transactions derived from a grant held by James Mwaura Thuku that has already been revoked by the High Court, on 30th April 2020, and therefore, James Mwaura Thuku had no legal authority to sell or transfer the 92 plots to the Plaintiffs.
56. They highlighted that there were active status quo and stay orders from the Succession Court pending the appeals, which the Plaintiffs were allegedly trying to bypass by lying in their verifying affidavit that no other related proceedings exist, despite being aware of the succession dispute and the pending appeals. Their contention was that, because the foundation of the Plaintiffs' title rested on a revoked grant, their claim was legally untenable, frivolous, and scandalous.
57. In response, the Plaintiff/Respondents opposed the application, arguing that their suit was a legitimate pursuit of justice. They contended that when they sought a review in the Succession Court (Cause No. 175 of 2003), that court explicitly ruled it lacked jurisdiction over land ownership disputes and directed them to file their claim in the Environment and Land Court (ELC). They clarified that the grant was revoked under Section 76(e) of the Law of Succession Act simply because the holder (James Mwaura Thuku) had died and therefore it was inoperative, but not because it was obtained through fraud or illegality. That their purchases

therefore remained valid as they relied on a then-valid court grant and title.

58. That their suit was not sub judice because they are not parties to the Court of Appeal cases, which concern succession/inheritance among family members, whereas this suit concerns the rights of third-party purchasers/creditors, wherein the ELC was the only forum which could determine the recourse available to buyers who relied on official court-sanctioned documents and have since developed the land. They denied abusing the court process, maintaining that they are following the legal roadmap set out by the High Court in Eldoret to protect their colossal investments.

59. The provisions of Section 6 of the Civil Procedure Act provide as follows:

'No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.'

60. Section 6 of the Civil Procedure Act (Chapter 21, Laws of Kenya) codifies the doctrine of Sub Judice. The primary purpose of this section is to prevent two courts from hearing the same dispute simultaneously, thereby avoiding conflicting judgments and preventing the abuse of the court's time. The key requirements that must be met for sub judice to kick in are that:

- i. The new case must be nearly identical to the case already filed.

- ii. The parties or entities involved in both lawsuits must be the same, or their legal representatives (e.g., heirs or parties under whom they claim).
- iii. The parties must be litigating in the same capacity for example, both cases are about their rights as purchasers or beneficiaries.
- iv. The first case must still be active in a court that has the jurisdiction to grant the requested relief.

61. The objective of sub judice is to prevent a situation where the High Court in one town says "Yes" while the Environment and Land Court in another town says "No" to the same problem. It also ensures that court resources are not wasted repeating the same trial and stops a Plaintiff from "bullying" a Defendant by filing multiple cases about the same issue in different places

62. In the present circumstances, there are several significant facts that neither the Applicants nor the Respondents contest, and identifying them helps narrow the focus to the actual legal conflict.

- i. It is agreed that the land (LR 1556/167) was originally owned by Samuel Thuku Kiarie (deceased).
- ii. That James Mwaura Thuku (Samuel's son) obtained Letters of Administration for the estate on 1st December 2005, which were confirmed on 11th December 2006 in the Eldoret High Court Succession Cause No. 175 of 2003
- iii. Pursuant to that confirmed grant, James Mwaura Thuku was registered as the proprietor of the suit land.
- iv. That between 2008 and 2010, the Plaintiffs entered into sale agreements with James Mwaura Thuku for 92 plots subdivided from the main parcel and subsequently took possession of them, and have since developed the land with permanent residential and commercial structures and have lived there for approximately 15 years.

- v. James Mwaura Thuku passed away on 24th December 2017 wherein the Grant issued to him was revoked on 30th April 2020 under Section 76(e) of the Law of Succession Act because it had become inoperative due to the death of the administrator.
 - vi. Both parties acknowledge that the revocation and subsequent orders are currently the subject of two active appeals in the Court of Appeal, being Civil Appeal Nos. E044 and E049 of 2022.
 - vii. It is also not disputed that the High Court in Eldoret, in a ruling dated 30th November 2020, directed the Plaintiffs to transfer their land ownership claim to the Environment and Land Court (ELC) because it lacked jurisdiction.
 - viii. That the current status was that there are existing court orders dated June 2020 and June 2022 directing that the status quo of the properties forming the estate be maintained pending the determination of the appeals.
63. It is therefore not in dispute that while the history of the matter is undisputed, the legal consequence is where they differ with the Applicant's position being that because the root, which is the grant herein, is dead and under appeal, the branch, which is the sale, must fail. That because the Court of Appeal is currently deciding the validity of the Grant which is the root of the title, the ELC case is sub judice.
64. The Respondents' position, on the other hand, is that the root was healthy when the fruit was picked, and therefore the administrator's later death did not undo a lawful sale to innocent third parties. They argue that the matter is not sub judice because they are different parties litigating under a different title, as Purchasers, not as Heirs, for which the relief they seek is the protection of their land, which is different from the relief in the Court of Appeal on who should manage the estate.

65. Given the above argument, the question I find for determination is whether the matter is sub judice.
66. I find that the Plaintiffs' ownership is 100% dependent on the grant issued to James Mwaura Thuku, such that, because the Court of Appeal is currently deciding whether that grant should have been revoked, the subject matter, which is the legal validity of the administrator's power, is currently under active judicial consideration by a higher court. Therefore, should this court declare the Plaintiffs the lawful owners today, and the Court of Appeal subsequently finds the original Grant was obtained through fraud, rendering it *void ab initio*, and all resulting transfers must be cancelled, this court would have sanctified a nullity which would lead to a chaotic conflict of laws and an embarrassment to the judicial hierarchy because the two courts will have issued contradictory orders, which is the exact scenario Section 6 of the Civil Procedure Act is designed to prevent.
67. I also find that while the Plaintiffs are not the same parties as those in the Eldoret High Court Succession Cause No. 175 of 2003, nor are they parties to the appeal, they are third-party purchasers whose voices have not yet been heard in the appellate forum, although they are litigating under the same title, which is the Estate of Samuel Thuku.
68. On the other hand, I find that while the Court of Appeal is seized with a succession dispute, which concerns the administration and distribution of an estate, this court is seized with an environmental and land dispute, namely the proprietary rights of bona fide purchasers. Therefore, the ELC would be answering a Land question as to whether, as bona fide purchasers, they should retain their land if the seller's authority is later revoked. While the two are related, the legal principles governing the protection of titles under the Land Registration Act differ from those governing the revocation of grants under the Law of Succession Act.
69. In **Yaya Towers Limited v Trade Bank Limited (In Liquidation)** [2000] eKLR, Lakha JA observed as follows:

“A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved...If the defendant assumes the heavy burden of demonstrating the claim is bound to fail, he will not be allowed to conduct a mini trial upon affidavits...It is not the length of arguments in the case but the inherent difficulty of the issues, which they have to address that, is decisive... The issue has nothing to do with the complexity or difficulty of the case or that it requires a minute or protracted examination of the documents and facts of the case but whether the action is one which cannot succeed or is in some ways an abuse of the process of the Court or is unarguable...”

70. I find that this suit falls into a grey area, because while it is not purely sub judice, it is closely enough related to warrant caution. Therefore, it would be an affront to the right to access justice under Article 50(1) of the Constitution to strike it out, more so when the parties were specifically directed to this forum by a court of competent jurisdiction. Rather than striking out the suit or hearing it now, at the risk of a conflicting decision, I would choose the third option, which is a stay of proceedings pending the

Court of Appeal's decision on the fate of the Grant. To this effect, it is directed as follows;

- i. The Application dated 16th January, 2026, to strike out the Plaintiffs' suit is hereby denied.
- ii. A Stay of Proceedings is hereby ordered in this suit pending the hearing and determination of the Eldoret Court of Appeal Civil Appeal Nos. E044 of 2022 and E049 of 2022.
- iii. The parties are ordered to maintain the status quo regarding the occupation of Land Parcel Number I.R 75123 LR 1556/167 until further orders of this Court or the Court of Appeal.
- iv. Any party may move the court appropriately once the Court of Appeal has delivered its final judgment.
- v. The costs of this application shall abide the outcome of the main suit.

Dated and delivered via Microsoft Teams at Naivasha this 7th day of May 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE